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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.		
10/624,660	07/22/2003	Paul T. Van Gompel	659-1143	7010		
757	7590	08/18/2008	EXAMINER			
BRINKS HOFER GILSON & LIONE P.O. BOX 10395 CHICAGO, IL 60610				CRAIG, PAULA L		
ART UNIT		PAPER NUMBER				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/624,660	VAN GOMPEL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	PAULA L. CRAIG	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 19 May 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-16, 28, 29, 32 and 33 is/are pending in the application.  
 4a) Of the above claim(s) 3, 4, 6 and 33 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-2, 5, 7-16, 28-29, and 32 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/7/2008</u> .  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 19, 2008 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-2, 7-13, 15, and 28-29 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application No. 2004/0060648 to Thorson et al.

4. The applied reference has a common assignee and inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e)

might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

5. For Claim 1, Thorson '648 teaches a method of manufacturing a disposable undergarment including moving a web of body panel material in a longitudinal machine direction, the web of body panel material having first and second spaced apart outer edges; forming a cutout in the web and thereby removing a portion of the body panel material from the web (cutout is the section of waste material 42 cut from the area to be covered by crotch member 50, Figs. 1-7 and paragraphs 1, 7, 10, 34 and 69; note that the claim does not require that the undergarment has no other cutouts). Thorson '648 teaches cutting the web of body panel material along the longitudinal machine direction and thereby forming a rear body panel web and a front body panel web, wherein cutting the web of body panel material includes forming first and second cut edges on the front and rear body panel webs, wherein the removed portion of the body panel material does not form any part of the front and rear body panel webs (removed portion of the body panel material includes the waste material 42 cut from the area under crotch member 50, Figs. 1-2 and 4-8, paragraphs 10, 34, and 69, Claim 3). The cutout extends from at least one of the first and second cut edges toward a respective one of the first and second outer edges (Figs 2 and 4-8, paragraphs 64-66, 68-73; note that "extends" and "toward" are broad terms). Thorson teaches connecting a crotch member to each of the rear and front body panel webs, wherein the crotch member covers the cutout (crotch

member 50 covers the area where waste material 42 under it was removed, Figs. 1-2 and 6-8 and paragraphs 47, 64 and 69-73).

6. For Claim 10, Thorson '648 teaches a method of manufacturing a disposable undergarment including moving a web of body panel material in a longitudinal machine direction (Figs. 1-8, paragraphs 7, 27). The web is stretched in the longitudinal direction to a stretched condition (Figs. 1-8, paragraph 77, Claims 11, 30). Thorson teaches forming a cutout in the web while the web is in the stretched condition (cutout is the section of waste material 42 cut from the area to be covered by crotch member 50, Figs. 1-2, 4-8, paragraphs 1, 7, 10, 34, 69, 77, Claims 3 and 11). Thorson teaches cutting the web of body panel material along the longitudinal machine direction and thereby forming a rear body panel web and a front body panel web, and connecting a crotch member to each of the rear and front body panel webs, wherein the crotch member covers the cutout (Figs. 1-2 and 4-8, paragraphs 10, 34, 64-66, and 69-73, Claims 1 and 3).

7. For Claim 28, Thorson '648 teaches a method of manufacturing a disposable undergarment including moving a web of body panel material in a longitudinal machine direction (Figs. 1-8, paragraphs 7, 27). Thorson teaches forming a cutout in the web and thereby removing a portion of the body panel material from the web (cutout is the section of waste material 42 cut from the area to be covered by crotch member 50, Figs. 1-7 and paragraphs 1, 7, 10, 34 and 69). Thorson teaches cutting the web of body panel material along the longitudinal machine direction and thereby forming a rear body panel web and a front body panel web each having a cut terminal edge, with the cutout located entirely in one of the front and rear body panel webs, and the removed portion

of the body panel material does not form any part of the front and rear body panel webs (removed portion of the body panel material includes the waste material 42 cut from the area under crotch member 50, Figs. 1-2 and 4-8, paragraphs 10, 34, and 69, Claim 3). Thorson teaches separating the front and rear body panel webs so that the cut terminal edges of the front and rear body panels are spaced apart in a non-overlapping configuration and form a gap therebetween (Figs. 2-8, paragraphs 64-73, Claims 1 and 21). A crotch member 50 is connected to each of the rear and front body panel webs, with the crotch member covering the cutout (Figs. 1-8, paragraphs 51, 64-73, Claims 1 and 21).

8. For Claim 2, Thorson '648 teaches cutting the web including cutting the web such that the cutout is formed entirely in one of the front and rear body panel webs (front panel web includes front body panel 4; waste material 42 may be formed entirely in one of the body panels, such as body panel 4, before cutting; Figs. 2 and 4-8, paragraphs 47, 64, and 68-73).

9. For Claim 7, Thorson '648 teaches the first and second cut edges being substantially linear (Figs. 1-2 and 4-8, paragraphs 47, 64, 69-73).

10. For Claims 8 and 9, Thorson '648 teaches the web having a body side surface and a garment side surface, and connecting the crotch member to each of the front and rear body panel webs includes connecting the crotch member to the garment side surface or the body side surface of each of the front and rear body panel webs (Figs. 4 and 5 and paragraph 64).

11. For Claim 11, Thorson '648 teaches forming the cutout and cutting the web of body panel material along the longitudinal machine direction simultaneously with a single cutting device (cutting device is die cutter 100, oscillating cutter, slitter, water jet, or laser; Fig. 1, paragraphs 10, 69, 77).

12. For Claim 12, Thorson '648 teaches separating the front and rear body panel webs prior to connecting the crotch member 50 thereto (Figs. 1-2 and 4-8, paragraphs 64-65, 71-73, 75, Claim 1).

13. For Claim 13, Thorson '648 teaches the crotch member 50 including a top sheet, a back sheet, and a retention portion disposed between the top sheet and the back sheet (paragraphs 47, 51-52).

14. For Claim 15, Thorson '648 teaches the crotch member including at least one fold, and the connecting the crotch member to the front and rear body panel webs includes connecting the fold to the front and rear body panel webs (paragraphs 9, 47, 61, 63, 75, Claims 6, 29).

15. For Claim 29, Thorson '648 teaches stretching the web in the longitudinal direction prior to forming the cutout in the web, and forming the cutout includes forming the cutout in the stretched web (Fig. 1, paragraphs 74-77).

### ***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

17. Claims 14 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thorson '648.

18. For Claim 14, Thorson '648 teaches all the limitations of Claim 1, as described above in paragraph 5. Thorson '648 teaches stretching at least one of the front and rear body panel webs to a stretched condition prior to connecting the crotch member thereto (paragraph 77). Thorson teaches connecting the crotch member to at least one of the front and rear body panel webs (Fig. 1, paragraphs 64-66, 74). Thorson teaches that stretching helps to adjust the webs to a desired size (paragraph 77). Fig. 1 and paragraphs 72-74 of Thorson suggest that the webs are at least slightly stretched over the rollers during manufacture while the crotch member is connected. Thorson '648 does not expressly teach that the crotch member is connected when the front or rear body panel web is in a stretched condition. Applicant's specification does not disclose that attaching the crotch member when the front or rear body panel web is in a stretched condition serves any stated purpose or solves any particular problem; on the contrary, Applicant's specification teaches that the crotch member can be secured to the

body panels when they are in a stretched or unstretched condition (specification, page 16). In light of Thorson's teaching of a stretched condition, of passing the webs over rollers during manufacture, and of connecting the crotch member, it would have been obvious to connect the crotch member to the body panel webs in a stretched condition.

19. For Claim 32, Thorson '648 teaches all the limitations of Claim 1, as described above in paragraph 5. Thorson does not teach cutting the web of body panel material being performed separately from and after forming the cutout in the web. However, it is well known in the art to cut web sections in any suitable order. Applicant's specification does not disclose that cutting the web and the cutout separately serves any stated purpose or solves any particular problem; on the contrary, Applicant's specification describes this as equivalent to simultaneous cutting (specification, page 29). It would have been obvious to one of ordinary skill in the art at the time of the invention to cut the web sections in any suitable order.

20. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thorson '648 in view of U.S. Patent No. 6,570,056 to Tanzer et al.

21. For Claim 16, Thorson '648 teaches all the limitations of Claim 1, as described above in paragraph 5. Thorson teaches the crotch member 50 being made of a variety of materials (paragraphs 51-63). Thorson teaches the crotch member 50 including a topsheet, a backsheet, and an absorbent portion (paragraph 51). Thorson does not expressly teach the crotch member including an elastic material. However, elastic materials are well known in the art for topsheets, backsheets, and absorbent portions.

Tanzer teaches an absorbent article having a topsheet, backsheets, and an absorbent portion, all of which include an elastic material (Abstract, col. 2, line 31 to col. 5, line 22, col. 5, line 62 to col. 6, line 15, col. 8, lines 43-65 col. 9, lines 29-64). Tanzer teaches that stretching is desirable for disposable undergarments, helps prevent gel blocking of superabsorbent, and improves the fit (col. 1, lines 38-67, col. 8, lines 19-35, col. 10, lines 17-36) In light of Thorson's teaching that the crotch member may be made of a variety of materials, it would have been obvious to one of ordinary skill in the art to modify Thorson to include the topsheet, backsheet, and/or absorbent portion of the crotch member having an elastic material, as taught by Tanzer, to help prevent gel blocking and improve the fit, as taught by Tanzer.

#### ***Allowable Subject Matter***

22. Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The closest prior art is U.S. Patent Application Publication Nos. 2004/0060648 to Thorson et al., 2003/0230378 to Olsson et al., 2002/0151864 to Otsubo et al., and 2004/0122397 to Morman et al., and U.S. Patent No. 5,062,840 to Holt et al. Thorson teaches most of the claim limitations, including a method of manufacturing a disposable undergarment with steps of moving a web of body panel material in a longitudinal machine direction, forming a cutout in the web and removing a portion of the body panel material from the web, cutting the web along the longitudinal machine direction forming first and second cut edges on front and rear

webs, the cutout extending from one of the cut edges toward one of the outer edges of the body panel material, the crotch member covering an entirety of the cutout, and connecting a crotch member to each of the front and rear webs. Thorson does not teach the cutout having a substantially oval shape. Olsson teaches most of the claim limitations, including a substantially oval-shaped cutout, and arguably teaches the crotch member covering the entirety of the cutout. However, Olsson does not teach that the removed portion of the body panel material does not form any part of the front panel web; Olsson teaches away from this. Otsubo teaches most of the claim limitations. Otsubo arguably teaches a cutout. Otsubo does not teach the material from the cutout being removed from the web, nor the crotch member covering the entirety of the cutout. Otsubo does not teach the cutout being substantially oval-shaped. Morman teaches most of the claim limitations. Morman arguably teaches a cutout, the crotch member covering the entirety of the cutout, and arguably teaches material from the cutout being removed from the web. Morman does not teach the cutout having a substantially oval shape. Holt teaches a cutout having a substantially oval shape, but does not teach the other claim limitations. Motivation is lacking to combine Holt or Olsson with the other references.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAULA L. CRAIG whose telephone number is (571)272-5964. The examiner can normally be reached on M-F 8:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paula L Craig  
Examiner  
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